

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY TAGGART,

No. C-13-03439 TEH (PR)

Plaintiff,

ORDER SERVING COGNIZABLE CLAIM
AND DENYING MOTIONS FOR
APPOINTMENT OF COUNSEL AND FOR
DISCOVERY

v.

CITY AND COUNTY OF SAN FRANCISCO,
et al.,

Doc. Nos. 12, 13

Defendants.

_____ /

Plaintiff Anthony Taggart, an inmate at the San Francisco County Jail, filed a pro se civil rights action under 42 U.S.C. § 1983. On August 28, 2013, the Court issued an Order Dismissing the Complaint with Leave to Amend. On September 18, 2013, Plaintiff filed a First Amended Complaint (FAC) and motions for appointment of counsel and for discovery. Doc. ## 11 -13. For the reasons stated below, the Court serves Plaintiff's cognizable claim and denies his motions to appoint counsel and for discovery.

I

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." Id. § 1915A(b). Pleadings filed by pro se

litigants, however, must be liberally construed. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010); Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1990).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

Liability may be imposed on an individual defendant under § 1983 if the plaintiff can show that the defendant proximately caused the deprivation of a federally protected right. See Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988); Harris v. City of Roseburg, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a constitutional right within the meaning of § 1983 if he does an affirmative act, participates in another's affirmative act or omits to perform an act which he is legally required to do, that causes the deprivation of which the plaintiff complains. Leer, 844 F.2d at 633.

Local governments are "persons" subject to liability under 42 U.S.C. § 1983 where official policy or custom causes a constitutional tort, see Monell v. Dep't of Social Servs., 436 U.S. 658, 690 (1978); however, a city or county may not be held vicariously liable for the unconstitutional acts of its employees under the theory of respondeat superior, see Board of Cty. Comm'rs. of Bryan Cty. v. Brown, 520 U.S. 397, 403 (1997); Monell, 436 U.S. at 691. To impose municipal liability under § 1983 for a violation of constitutional rights, a plaintiff must show: (1) that the

1 plaintiff possessed a constitutional right of which he or she was
2 deprived; (2) that the municipality had a policy; (3) that this
3 policy amounts to deliberate indifference to the plaintiff's
4 constitutional rights; and (4) that the policy is the moving force
5 behind the constitutional violation. See Plumeau v. School Dist.
6 #40 County of Yamhill, 130 F.3d 432, 438 (9th Cir. 1997).

7 II

8 A

9 In its Order Dismissing the Complaint with Leave to Amend,
10 the Court noted that Plaintiff was attempting to allege an Eighth
11 Amendment claim for deliberate indifference to his serious medical
12 needs, but the allegations were deficient because Plaintiff failed
13 to: (1) indicate the nature of his serious medical; (2) link a
14 specific individual with the alleged constitutional violation; and
15 (3) allege that the public entities he named as Defendants violated
16 his rights pursuant to a custom or policy of that entity or allege
17 facts from which such a custom or policy could be inferred.

18 In his FAC, Plaintiff adds three Defendants: San Francisco
19 Mayor Edwin M. Lee, Health Right 360, and Dr. Goldstein, Chief
20 Medical Doctor of San Francisco County Jail. Plaintiff states that
21 he has attempted to get the names of the individual sheriff's
22 deputies and medical staff who were on duty when the events at
23 issued occurred, but to no avail. For this reason he has filed a
24 discovery motion requesting "logg" and time cards.

25 Plaintiff adds the allegations that he had gallstones,
26 which became infected and severe because sheriff's deputies and
27 nurses at the San Francisco County Jail refused to refer him to a
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1 doctor and delayed providing him with medical treatment. Plaintiff
2 alleges that he was crying and screaming in pain and deputies and
3 nurses forced him to walk or crawl, which infected his body. He
4 alleges that his medical records at San Francisco General Hospital,
5 where he was finally taken by ambulance, will show that, because of
6 the delay in treatment, Plaintiff almost died.

7 Plaintiff adds that the Sheriff's Department failed to
8 train its deputies and medical staff to recognize serious medical
9 emergencies, which allowed them to ignore Plaintiff's medical
10 emergency until he almost died. He also alleges that Mayor Lee and
11 the County Department of Public Health are "responsible for the
12 constitutional violations of jail medical staff."

13 B

14 The Court finds that Plaintiff's allegations that he was
15 suffering from gall stones states a serious medical need.

16 The Court finds that Plaintiff's allegations that the
17 Sheriff's Department failed to adequately train its deputies to
18 recognize medical emergencies and to obtain treatment for prisoners
19 who are suffering from such emergencies state a cognizable Eighth
20 Amendment claim. The Court finds that Plaintiff's allegations,
21 liberally construed, also state a claim against Dr. Goldstein for
22 failure to adequately train the County Jail medical staff in
23 recognizing and obtaining treatment for prisoners experiencing
24 medical emergencies.

25 However, Plaintiff's conclusory allegations that Mayor Lee
26 and the County Department of Public Health are responsible for the
27 conduct that caused deliberate indifference fail to state a claim
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1 against them and the claims against them are dismissed. Also,
2 Plaintiff makes no allegations against the City and County of San
3 Francisco or Health Right 360 and, thus, the claims against them are
4 dismissed.

5 III

6 A

7 Plaintiff moves for the appointment of counsel on the
8 grounds that the issues in his case are complex and that his
9 imprisonment will greatly limit his ability to litigate.

10 The decision to request counsel to represent an indigent
11 litigant under § 1915 is within "the sound discretion of the trial
12 court and is granted only in exceptional circumstances." Franklin
13 v. Murphy, 745 F.2d 1221, 1236 (9th Cir. 1984). A finding of the
14 "exceptional circumstances" of the plaintiff seeking assistance
15 requires an evaluation of the likelihood of the plaintiff's success
16 on the merits and an evaluation of the plaintiff's ability to
17 articulate his claims pro se in light of the complexity of the legal
18 issues involved. Agyeman v. Corrections Corp. of America, 390 F.3d
19 1101, 1103 (9th Cir. 2004). Neither the need for discovery, nor the
20 fact that the pro se litigant would be better served with the
21 assistance of counsel, necessarily qualify the issues involved as
22 complex. Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997).

23 Plaintiff has not shown that exceptional circumstances exist in
24 this case. Therefore, his motion is denied.

25 B

26 Plaintiff moves for the production of his medical file,
27 the time cards of the staff on duty during the incident at issue and
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1 Dr. Goldstein, Chief Medical Doctor at the San Francisco County
2 Jail. The Clerk shall also serve a copy of this order on Plaintiff
3 and mail a courtesy copy of this Order and the amended complaint to
4 the San Francisco City Attorney's Office.

5 5. To expedite the resolution of this case, the Court
6 orders as follows:

7 a. No later than sixty-three (63) days from the date
8 of this order, Defendants shall file a motion for summary judgment
9 or other dispositive motion. A motion for summary judgment shall be
10 supported by adequate factual documentation and shall conform in all
11 respects to Federal Rule of Civil Procedure 56, and shall include as
12 exhibits all records and incident reports stemming from the events
13 at issue. Defendants' motion shall include the required Ninth
14 Circuit notice to Plaintiff for opposing dispositive motions
15 required by Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir.
16 1998) (motion for summary judgment) and Wyatt v. Terhune, 315 F.3d
17 1108, 1120 n.14 (9th Cir. 2003) (motion to dismiss). If Defendants
18 are of the opinion that this case cannot be resolved by summary
19 judgment or other dispositive motion, they shall so inform the Court
20 prior to the date their motion is due. All papers filed with the
21 Court shall be served promptly on Plaintiff.

22 b. Plaintiff's opposition to the dispositive motion
23 shall be filed with the Court and served upon Defendants no later
24 than thirty-five (35) days after Defendants serve Plaintiff with the
25 motion.

26 c. Plaintiff is advised that a motion for summary
27 judgment under Rule 56 of the Federal Rules of Civil Procedure will,
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1 if granted, end your case. Rule 56 tells you what you must do in
2 order to oppose a motion for summary judgment. Generally, summary
3 judgment must be granted when there is no genuine issue of material
4 fact - that is, if there is no real dispute about any fact that
5 would affect the result of your case, the party who asked for
6 summary judgment is entitled to judgment as a matter of law, which
7 will end your case. When a party you are suing makes a motion for
8 summary judgment that is properly supported by declarations (or
9 other sworn testimony), you cannot simply rely on what your amended
10 complaint says. Instead, you must set out specific facts in
11 declarations, depositions, answers to interrogatories, or
12 authenticated documents, as provided in Rule 56(e), that contradict
13 the facts shown in Defendants' declarations and documents and show
14 that there is a genuine issue of material fact for trial. If you do
15 not submit your own evidence in opposition, summary judgment, if
16 appropriate, may be entered against you. If summary judgment is
17 granted, your case will be dismissed and there will be no trial.
18 Rand, 154 F.3d at 962-63.

19 Plaintiff also is advised that a motion to dismiss for
20 failure to exhaust administrative remedies under 42 U.S.C.
21 § 1997e(a) will, if granted, end your case, albeit without
22 prejudice. You must "develop a record" and present it in your
23 opposition in order to dispute any "factual record" presented by the
24 Defendants in their motion to dismiss. Wyatt, 315 F.3d at 1120
25 n.14.

26 d. Defendants shall file a reply brief within
27 fourteen (14) days of the date on which Plaintiff serves them with
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1 the opposition.

2 e. The motion shall be deemed submitted as of the
3 date the reply brief is due. No hearing will be held on the motion
4 unless the Court so orders at a later date.

5 6. Discovery may be taken in accordance with the Federal
6 Rules of Civil Procedure. No further court order is required before
7 the parties may conduct discovery.

8 7. All communications by Plaintiff with the Court must be
9 served on Defendants, or Defendants' counsel once counsel has been
10 designated, by mailing a true copy of the document to Defendants or
11 Defendants' counsel.

12 8. It is Plaintiff's responsibility to prosecute this
13 case. Plaintiff must keep the Court and all parties informed of any
14 change of address and must comply with the Court's orders in a
15 timely fashion. Failure to do so may result in the dismissal of
16 this action pursuant to Federal Rule of Civil Procedure 41(b).

17 9. This Order terminates docket nos. 12 and 13.

18 IT IS SO ORDERED.

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20 DATED 10/04/2013



THELTON E. HENDERSON
United States District Judge

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